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State v. Scott Respondent's Brief Dckt. 41343

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
vs.) No. 41343
) Canyon Co. Case No.
) CR-2010-6106
)
ALEX DAVID TONY SCOTT,)
)
Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

HONORABLE JUNEAL C. KERRICK
District Judge

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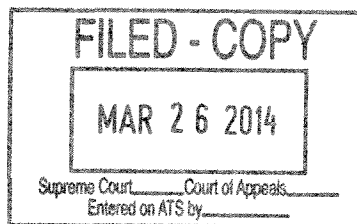


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STATEMENT OF THE CASE

Nature of the Case

Alex David Tony Scott appeals from an order denying his motion to withdraw his guilty pleas to two counts of aggravated assault.

Statement of Facts and Course of Proceedings

Scott pleaded guilty to two counts of aggravated assault. (R., p. 77; Tr., p. 23, L. 24 – p. 26, L. 16.) The district court sentenced Scott to a unified term of five years in prison with two years fixed as to Count I, and a consecutive term of five years indeterminate as to Count II. (R., pp. 77-78; Tr., p. 79, Ls. 5-12.) The court gave Scott credit for prejudgment time served, and retained jurisdiction. (R., p. 78; Tr., p. 80, Ls. 14-18.)

After Scott completed his Correctional Alternative Placement Program (CAPP), the court suspended his sentence and placed him on probation. (PSI, pp. 112; R., pp. 83-94.) Within a week of the court's order, Scott violated probation. (R., p. 96.) In the next few months, Scott admitted to several probation violations. (R., pp. 101, 110-16, 125-26.) Scott was taken into custody, arraigned, and ordered to undergo a mental health evaluation at his request. (R., pp. 131, 134-39.) After a hearing, the court entered an Order of Mental Commitment. (R., pp. 141-48.) Ten days later, Scott filed a motion to withdraw his guilty plea. (R., pp. 149-50.)

After Scott was released from his mental commitment, the court revoked Scott's probation. (R., pp. 152-61.) The court heard and granted Scott's oral Rule 35 motion, and modified Scott's sentence to a unified term of five years with

one year fixed on Count I, and a consecutive term of five years indeterminate on Count II, with credit for time served. (R., pp. 160-65.)

Several months later, Scott filed an amended motion to withdraw guilty plea. (R., pp. 168-70.) The court conducted an evidentiary hearing at which Scott testified. (R., pp. 193-95; see 5/29/13 Tr.) The court denied Scott's motion for lack of jurisdiction and, alternatively, on the court's findings that such relief was not needed to correct a manifest injustice. (R., pp. 196-210.) Scott timely appealed. (R., pp. 212-15.)

ISSUE

Scott states the issue on appeal as:

Mindful of this Court's decision in *State v. Jakoski*, 139 Idaho 352 (2003), did the district court abuse its discretion when it denied Mr. Scott's Motion to Withdraw Guilty Plea?

(Appellant's brief, p. 3.)

The state rephrases the issues as:

In light of *State v. Jakoski*, 139 Idaho 352, 79 P.2d 711 (2003), has Scott failed to show the district court erred in denying Scott's Motion to Withdraw Guilty Plea?

ARGUMENT

In Light Of *Jakoski*, The District Court Properly Denied Scott's Motion To Withdraw Guilty Plea For Lack Of Jurisdiction

Scott argues the district court abused its discretion when it denied his motion to withdraw guilty plea. (Appellant's brief, p. 4.) A district court's denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion. State v. Moon, 140 Idaho 609, 610, 97 P.3d 476, 477 (Ct. App. 2004). However, whether the district court had jurisdiction to consider a motion is a question of law subject to free review on appeal. State v. Peterson, 148 Idaho 610, 613, 226 P.3d 552, 555 (Ct. App. 2010). Under State v. Jakoski, 139 Idaho 352, 79 P.2d 711 (2003), the court lacked jurisdiction to consider Scott's motion.


Under Rule 33(c), "[a] motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended." I.C.R. 33(c). After the court has imposed or suspended sentence, the district court "may set aside the judgment of conviction and permit" withdrawal of defendant's plea "to correct manifest injustice." I.C.R. 33(c). However, "a court's jurisdiction to amend or set aside the judgment in a case does not continue forever." Jakoski, 139 Idaho at 354-55, 79 P.3d at 713-14. "Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." Id. at 355, 79 P.3d at 714 (footnote omitted). There is no provision in Rule 33(c) to extend the court's jurisdiction to hear a motion to withdraw a guilty plea.

The district court imposed and suspended Scott's judgment on December 10, 2010. (R., pp. 77-79.) The time to appeal that judgment expired 42 days later, at which time the judgment became final. I.C.R. 54.3. Scott did not appeal his judgment. On December 19, 2011, eleven months after the judgment became final, Scott filed his motion to withdraw his guilty plea. (R., pp. 149-50.) The district court was without jurisdiction to consider the motion. Accordingly, Scott's motion to withdraw his guilty plea was properly denied.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order.

DATED this 26th day of March, 2014.



DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of March, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



DAPHNE J. HUANG
Deputy Attorney General

DJH/pm